

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

HPSH, LLC,

Plaintiff,

Case No: 16-12105  
Hon. Victoria A Roberts

v.

CITY OF HIGHLAND PARK.

Defendants.

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**ORDER DENYING DEFENDANT'S SECOND MOTION TO DISMISS [ECF. NO. 8]**

Defendant filed its second motion to dismiss (**Doc. # 8**) for failure to state a claim, pursuant to Fed. R. Civ. P. 12(b)(6). A Rule 12(b)(6) motion tests the legal sufficiency of claims alleged in the complaint. "To survive a motion to dismiss [under Rule 12(b)(6)], a complaint must contain sufficient factual matters, accepted as true, to 'state a claim to relief that is plausible on its face.'" See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Defendant fails to focus on the face of the Complaint. Instead, it argues the merits of Plaintiff's case and bases its argument largely on matters outside the pleadings.

But, in a Rule 12(b)(6) motion to dismiss, the Court will not consider matters outside the pleadings. Fed. R. Civ. P. 12 (d).

Defendant's motion is deficient. It did not apply the proper standard of review. This is not a Fed. R. Civ. P. 56 motion, where the Court will grant summary judgment if

“the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Rule 56(a).

The Court **DENIES** Defendant’s Motion.

**IT IS ORDERED.**

S/Victoria A. Roberts  
United States District Judge

Dated: 10/21/2016